

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

March 15, 2006

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Date Submitted: February 27, 2006
Date Decided: March 15, 2006

Re: *Leonard Giulianelli v. Robert F. Zogby*
C.A. No. 05C-05-023-THG

Dear Counsel:

This Court has before it a motion for summary judgment by Defendant seeking to remove the issue of punitive damages from the jury's consideration of the automobile personal injury action.

Allegation

Leonard Guilianelli, Plaintiff, alleges that Robert F. Zogby, Defendant, ran a red light at the intersection of Route 1 and Route 16 causing a motor vehicle accident on August 14, 2004.

Standard of Review

Summary judgment shall be granted if it is shown that “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”¹ The evidence must be viewed in the light most favorable to the non-moving party.²

Delaware Punitive Damage Law

“Punitive Damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.”³ Conduct is considered outrageous if defendant acts with an “evil motive” or “reckless indifference to the rights of others.”⁴ “The willful and wanton standard necessary to justify the imposition of punitive damages refers to ‘a distinct state of mind, one a conscious awareness, the other a conscious indifference.’”⁵ However, “each requires that the defendant foresee that his unacceptable conduct threatens particular harm to the plaintiff either individually or as a part of a class similarly situated.”⁶ “Willfulness and wantonness involve an awareness, either actual or constructive, of one’s conduct and a realization of its probable consequences, while negligence lacks intent, actual or constructive.”⁷

Analysis

Defendant alleges that the last time he noticed the traffic light it was green. Plaintiff has presented evidence that the cycle from yellow to red (on Route 1) and to green light (on Route 16) was 8.5 seconds at the intersection. Plaintiff alleges it would take at least 2 seconds for

¹ DE R S CT Rule 56 (c).

² *Merrill v. Crothall-American Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

³ *Jardel Co., Inc. v. Hughes*, 523 A.2d 518, 529 (Del. 1987) quoting *Restatement (Second) of Torts* §908, comment b (1979).

⁴ *Id.* quoting *Restatement (Second) of Torts* §908, comment b (1979).

⁵ *Strauss v. Biggs*, 525 A.2d 992, 999 (Del. 1987) quoting *Jardel*, 523 A.2d at 529.

⁶ *Jardell*, 523 A.2d at 529-530.

⁷ *Id.* at 530 quoting *McHugh v. Brown*, 125 A.2d 583, 585 (Del. 1956).

Plaintiff to react to the green light and move his motor vehicle into the intersection. Therefore, Plaintiff alleges that Defendant failed to observe the change of the traffic light for 10.5 seconds or perhaps Defendant saw the light change and tried to get through it.

The accident occurred on a major highway and there has been no evidence presented to the Court as to why Defendant could not have seen the light or why Defendant did not react within the 10.5 seconds.

As I noted at argument, the Courts of this State usually do not allow punitive damages in automobile personal injury cases absent truly outrageous and reckless conduct. At this stage of the proceedings, I am reluctant to grant summary judgment. I prefer to hear everything the jury will have before it and then make a decision.⁸

Conclusion

Therefore, the summary judgment motion as to punitive damages is denied without prejudice to renew same at the close of Plaintiff's case in chief.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

Original to Prothonotary

⁸*Ebersole v. Lowengrub*, 180 A.2d 467 (Del. 1962).